IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

RSA.No. 960 of 2007(E)

AS.131/2005 of SUB COURT,NEYYATTINKARA
OS.790/1979 of PRL.M.C.,NEYYATTINKARA
(IA.4524/2004)
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APPELLANTS-APLNTS/CR.PTNR/DFNDTS.1,2,4,6,8,9 & 14 to 16
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1. PONNAMMA PILLA THANKACHI, AGED 83,
D/O. KOCHUMMINI PILLA THANKACHI, RESIDING AT
KUMARAMANGALAM, VETTAMANGALAM, RESSELPURAM P.O.
(VIA) BALARAMAPURAM, MARANALLOOR DESOM & VILLAGE,
NEYYATTINKARA TALUK,HAVING ALSO MADAVILAKATHUVEEDU
VETTAMANGALAM, MARANALLOOR DESOM -DO- -DO-.

2. SANALKUMARAN THAMPI, AGED 59,
S/O. KUMARA PILLA, RESIDING AT -DO- -DO-.

3. VIJAYAKUMARAN THAMPI, AGED 59,
S/O. KUMARA PILLA, RESIDING AT -DO- -DO-.

4. PRADEEP KUMAR, AGED 51,
S/O. KUMARA PILLA, RESIDING AT -DO- -DO-.

5. RENUKA THANKACHI, AGED 46,
D/O. PONNAMMA PILLA THANKACHI, RESIDING AT -DO-DO-

6. LOLITHA THANKACHI, AGED 41,
D/O. PONNAMMA PILLA THANKACHI, RESIDING AT -DO-DO-

7. SHEEBA S.NAIR, AGED 35,
D/O. LATHIKAKUMARI THANKACHI, KUMARAMANDIRAM,
VETTAMANGALAM, RUSSELPURAM P.O. (VIA)BALARAMAPURAM
MARANALLOOR DESOM AND VILLAGE, NEYYATTINKARA TALUK

8. SHEEJA S.NAIR, AGED 33,
D/O. LATHIKAKUMARI THANKACHI,RESIDING AT -DO--DO-.

9. SHIJI S. NAIR, AGED 29,
D/O. LATHIKAKUMARI THANKACHI,RESIDING AT -DO--DO-.

BY ADV. SRI.K.P.SREEKUMAR

RESPONDENTS: PTNRS/PLNTFS & DFNDTS.5,7,10,12,13& 17 TO 22 IN OS
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1. RAJESWARI AMMA, AGED 67,
D/O. VIJAYAMMA PILLA, RAJ BHAVAN,VARUVILAKOM, ATHIYANNOOR DESOM & VILLAGE,NEYYATTINKARA TALUK, ARALUMMOODU P.O. HAVING ALSO HOUSE AT CHANDRAMANGALAM, PERUMPAZHUTHOOR DESOM, PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA TALUK.

2. C.V. SREEKUMAR, AGED 51,
S/O. VELAPPAN NAIR, RESIDING AT -DO- -DO-.

3. C.V. JAYA KUMAR, AGED 49,
S/O. VELAPPAN NAIR, RESIDING AT -DO- -DO-.

4. SREEKUMARI, AGED 46,
D/O. RAJESWARI AMMA, RESIDING AT -DO- -DO-.

5. C.V. PADMAKUMAR, AGED 44,
S/O. VELAPPAN NAIR, RESIDING AT -DO- -DO-.

6. C.V. GOPAKUMAR, AGED 41,
S/O. VELAPPAN NAIR, RESIDING AT -DO- -DO-.

7. JAYASREE, AGED 39,
D/O. RAJESWARI AMMA, RESIDING AT -DO- -DO-.

8. NANDAKUMARAN THAMPI, AGED 54,
S/O. KUMARA PILLAI, NANDU LAND M.I.G. 368, PANAMPALLI NAGAR, ERNAKULAM, KOCHI, ALSO HAVING ADAVILAKATHU VETTAMANGALAM, ARANALLOOR VILLAGE, NEYYATTINKARA TALUK.

9. DILEEP KUMAR, AGED 51,
S/O. KUMARA PILLAI, SANTHOSH COTTAGE, KAKKAVILA, KAKKAVILA P.O., PIN-695 506, ALSO HAVING MADAVILAKATHU VEEDU, VETTAMANGALAM, MARANALLOOR DESOM AND VILLAGE.

10. THRIPURESWARI AMMA, AGED 71,
D/O. VIJAYAMMA PILLA, SREE BHAVAN, KIZHAKKE PATTOM, THIRUVANANTHAPURAM.

11. BALAKRISHNAN ALIAS BALAN PANICKER,
AGED 72, S/O. THAMPI PANICKER, KULATHINKARA,
MELE THEKKEKARA VEEDU, PERUMPAZHUTHOOR DESOM &
VILLAGE, PERUMPAZHUTHOOR.

12. KAMAPALAN, AGED 67,
S/O. PONNU PANICKER, SANTHI NIVAS, KALATHUVILA,
PERUMPAZHUTHOOR P.O., MARANALLOOR DESOM & VILLAGE.

13. OMANA, AGED 64,
W/O. SISUPALAN, KALATHUVILA PUTHEN VEEDU,
VETTAMANGALAM, RUSSELPURAM P.O.,(VIA)BALARAMAPURAM

14. RETNAKARAN, AGED 42,
S/O. SISUPALAN, PAMMAMTHALAKKAL VEEDU,
VETTAMANGALAM, RUSSELPURAM P.O.,(VIA)BALARAMAPURAM
NEYYATTINKARA.

15. MANIYAN, AGED 40,
S/O. SISUPALAN, RESIDING AT KOLATHUVILA PUTHEN
VEEDU, VETTAMANGALAM, RUSSELPURAM P.O.,
(VIA)BALARAMAPURAM, NEYYATTINKARA.

16. VAISAKHAN, AGED 38,
S/O. SISUPALAN, RESIDING AT -DO- -DO-.

17. ANILA KUMARI, AGED 36,
D/O. OMANA AMMA, RESIDING AT -DO- -DO-.

18. SUNILA, AGED 34,
D/O. OMANA AMMA, RESIDING AT -DO- -DO-.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A.No.960 OF 2007

Dated this the 14th day of November, 2007

JUDGMENT

Learned counsel appearing for the appellant was heard. Appellants are defendants 1, 3, 4 , 6, 8, 9 and 14 to 16 in O.S.No.790/2001 on the file of Munisiff Court, Neyyattinkara. A preliminary decree for redemption was passed on 14/12/1987. It was challenged in A.S.No.23/1988 before the District Court, Thiruvananthapuram. First appellate court remanded the suit after setting aside the decree and judgment passed by the trial court . It was challenged before this court in C.M.A.NO. 210/1994. This court as per judgment dated 07-01-2004 set aside the judgment of the first appellate court and restored the preliminary decree originally passed by the trial court. Plaintiffs thereafter filed I.A.No. 4524/04, an application for passing a final decree. Plaintiffs deposited the amount on 03/03/2004. A final decree was passed on 29/09/2004. It was challenged before Sub Court, Neyyattinkara in A.S.No. 131/2005. Learned Sub Judge dismissed the appeal. It is challenged in the second appeal.

2. The argument of learned counsel appearing for the

appellant is that the preliminary decree was passed on 14/12/1987 and only passing of the final decree was stayed by the District court, Thiruvananthapuram when A.S.No.23/1988 was pending and so an application for passing final decree could have been filed , but I.A.No.4524/2004 was filed only in 2004 and therefore it is barred by time. The argument is that period for computation of limitation is to be calculated from the date of the preliminary decree on 14/12/1987 and hence the final decree passed is unsustainable. Learned counsel relied on the decision reported in **State of Uttar Pradesh v. Mohammed Nooh** (AIR 1958 Supreme Court 86) and argued that pendency of the appeal is not a bar for filing a final decree application. Reliance was also placed on the decision of the Apex Court in **Sree Chamundi Mopeds Ltd. v. Church of South India Trust Assocaition CSI Cinod Secretariate, Madras** (1992 (3) SCC 1). Learned counsel also argued that the decision relied on by the first appellate court has no relevance on the facts of this case

3. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. True, an order of stay of passing of a final decree, will not operate as a bar against plaintiffs from filing an application for passing the final decree. But the trial court could not have passed a final decree

during the pendency of A.S. No.23/1988 especially when there is an order of stay of passing of the final decree. Moreover as per judgment dated 15/2/1994, preliminary decree passed by the trial court was set aside by the first appellate court and suit was remanded. Therefore even if plaintiffs had taken the trouble of filing a final decree application, by the judgment of the first appellate court, that application would have been dismissed. More over, the preliminary decree passed by the trial court was restored by this court only as per the judgment dated 07/1/2004. Therefore, the decree of the trial court has merged with the decree of this court. The period for limitation would only start to run from 07-01-2004. As the original preliminary decree was merged with the decree of this court dated 07/01/2004, period can be computed only from that day. The final decree application was filed in 2004 itself. In such circumstances, there is no bar of limitation as claimed by the appellant.

Appeal is dismissed as no substantial question of law is involved.

M.SASIDHARAN NAMBIAR
JUDGE

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